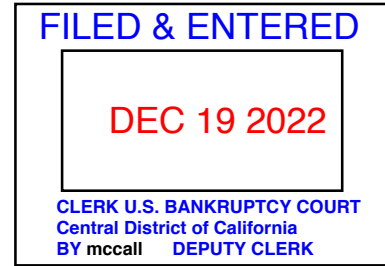


## **EXHIBIT 2**

00001607



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION**

In re

JAMIE LYNN GALLIAN,

Debtor.

Chapter 7

Case No. 8:21-bk-11710-SC

**MEMORANDUM OF DECISION  
REGARDING DEBTOR'S MOTION FOR  
RECONSIDERATION OF THE COURT'S  
AUGUST 5, 2022 ORDER SUSTAINING  
OBJECTION TO DEBTOR'S  
HOMESTEAD EXEMPTION**

Date: September 22, 2022

Time: 10:00 a.m.

Place: Courtroom 5A – via zoom

On July 26, 2022, Jamie Lynn Gallian ("Debtor") filed "Debtors [sic] Notice of and Motion for Reconsideration of 7.21.22 Order Sustaining Houser Bros. Co. DBA Rancho Del Rey Mobile Home Estates [sic] Objection to Debtor's Claimed Homestead Exemption and Joinder Parties Huntington Beach Gables HOA; Janine Jasso" [dkt # 157] (the "Motion"). Houser Bros. Co. dba Rancho Del Rey Mobile Home Estates ("Houser Bros") filed a "Response to Debtor's Notice of and Motion for Reconsideration of 7.21.22 Order Sustaining Houser Bros. Co. DBA Rancho Del Rey Mobile Home Estate's [sic] Objection

1 to Debtor's Claimed Homestead Exemption" [dkt # 170] (the "Response") on August 4,  
2 2022. Jeffrey Golden, the Chapter 7 Trustee ("Trustee"), filed "Trustee's Joinder in  
3 Houser Bros. Co. DBA Rancho Del Rey Mobile Home Estates' Response to Debtor's  
4 Notice of and Motion for Reconsideration of 7.21.22 Order Sustaining Houser Bros. Co.  
5 DBA Rancho Del Rey Mobile Home Estate's [sic] Objection to Debtor's Claimed  
6 Homestead Objection" [dkt 171] (the "Trustee's Joinder") on August 4, 2022. Also on  
7 August 4, 2022, the Huntington Beach Gables Homeowners Association (the "HOA") filed  
8 "The Huntington Beach Gables Homeowners Association's Joinder to Houser Bros. Co.  
9 dba Rancho Del Rey Mobile Home Estates' Response to Debtor's Motion for  
10 Reconsideration" [dkt #173] (the "HOA Joinder"). Debtor filed a "Reply to Houser Bros Co  
11 DBA Rancho Del Rey MobileHome [sic] Estates [sic] Opposition to Debtors [sic] Motion  
12 for Consideration [sic] of 7/21/22 Order Sustaining Houser Bros Co DBA Rancho Del Rey  
13 Mobilehome [sic] Estates [sic] Objection to Debtor's Claimed Homestead Exemption" [dkt  
14 #185] (the "Reply"). The Motion initially came on for hearing before the Honorable Erithe  
15 A. Smith on August 18, 2022 at 10:30 a.m. The hearing was subsequently continued to  
16 September 22, 2022 for further oral argument. Appearances were made as noted on the  
17 Court's record. After the hearing, the matter was taken under advisement.<sup>1</sup>

#### 20 Procedural Background

21 On May 12, 2022, Houser Bros filed a "Motion Objecting to Debtor's Claimed  
22 Homestead Exemption" ("Homestead Motion"). Dkt. 95. Joinders to the Homestead  
23 Motion were filed by the HOA, creditor Janine Jasso ("Jasso"), and chapter 7 trustee

24  
25  
26 <sup>1</sup> This case was transferred to the Honorable Scott Clarkson on September 1, 2022 due to the retirement of  
27 the undersigned, Judge Erithe Smith, on October 29, 2022. However, as Judge Smith issued the underlying  
28 order sustaining Trustee's objection to Debtor's homestead exemption, presided over the hearing on  
Debtor's instant motion for reconsideration, and continues to serve as a recalled bankruptcy judge, she has  
authority and jurisdiction to rule on this motion for reconsideration.

1 Jeffrey Golden (“Trustee”)<sup>2</sup> (collectively, the “Joining Parties”). Dkts. 98, 100. The  
2 Homestead Motion was set for hearing on June 2, 2022, at 10:30 a.m. Dkt. 99. Debtor  
3 filed a late opposition to the Homestead Motion (“Homestead Opposition”) on June 1,  
4 2022, just one day prior to the hearing. Dkt. 105.

5 On June 2, 2022, the Court conducted a hearing on the Homestead Motion  
6 and continued the hearing to July 21, 2022 in order to allow the Joining Parties to  
7 respond to Debtor’s late-filed Homestead Opposition. On June 23, 2022, the Court  
8 entered its “Order Continuing Hearing on Motion Objecting to Debtor’s Claimed  
9 Homestead Exemption” (“June 23, 2022 Order”), which attached a copy of the  
10 Court’s tentative ruling for the hearing on June 2, 2022. Dkt. 124. The June 23,  
11 2022 Order provided that the hearing on the Homestead Motion was continued to  
12 July 21, 2022, at 10:30 a.m. to allow Houser Bros and the Joining Parties to file  
13 replies to Debtor’s late opposition by July 7, 2022 and that no further pleadings  
14 were to be filed regarding the Motion. Dkt. 124.

15  
16  
17 Timely reply briefs were filed by Houser Bros and the HOA. Dkts. 129, 130,  
18 131, 132, 133. On July 8, 2022, Debtor filed an unauthorized “Reply to Greg  
19 Buysman, CA Notary Public Commission Number 2341449; Owner & Operator the  
20 UPS Store, Edinger/Springdale.” Dkt. 134.

21  
22 The Court held a continued hearing on the Homestead Motion on July 21,  
23 2022, at which time it orally granted the same for the reasons stated in its posted  
24 tentative ruling. That same day, on July 21, 2022, Debtor filed a “Notice of  
25 Lodgment of Orange County Tax Assessors [sic] Proof of Debtors [sic] Homestead  
26 Exemption Effective 2/25/2021 in Support of Opposition to Motion Objecting to

27 \_\_\_\_\_  
28 <sup>2</sup> Trustee’s joinder was not filed until June 30, 2022. Dkt. 128.

1 Claimed Homestead Exemption” (“First NOL”). Dkt. 139. Later that same day, Debtor  
2 also filed a “Notice of Lodgment of Orange County Tax Assessors [sic] Proof of Debtors  
3 [sic] Homestead Exemption Effective 2/25/2021 in Support of Opposition to Motion  
4 Objecting to Claimed Homestead Exemption” (“Second NOL”). Dkt. 140. Finally, on July  
5 21, 2022, Debtor filed a “Notice of Appeal and Statement of Election” (“Notice of  
6 Appeal”) regarding a “7/21/2022 Order Denying Debtors [sic] Declared Homestead and  
7 Debtors [sic] Homeowners Exemption Effective February 25, 2021 with the Orange  
8 County Tax Assessor Pursuant to California Department of Housing and Community  
9 Development Certificate of Title Perfected February 25, 2021.” Dkt. 143. Debtor’s appeal  
10 was referred to the Bankruptcy Appellate Panel based on Debtor’s election. Dkt. 161.  
11 However, the Court’s “Order Granting Houser Bros. Co. dba Rancho Del Rey Mobile  
12 Home Estates’s Motion Objecting to Debtor’s Claimed Homestead Exemption in 16222  
13 Monterey Lane, Space 376, Huntington Beach, CA 92649” (“Homestead Order”) was not  
14 entered until August 5, 2022. Dkt. 177.

17 On July 26, 2022, Debtor filed the Motion. Dkt. 157. Shortly thereafter, on August  
18 1, 2022, Debtor filed a “Motion for Leave from the Bankruptcy Appeal [sic] Panel to  
19 Permit the Bankruptcy Court to Consider Debtor’s Motion for Re-Consideration [dkt. 157]  
20 on August 18, 2022.” Dkt. 167. The following day, on August 2, 2022, Houser Bros filed  
21 an “Optional Appellee Statement of Election to Proceed in District Court.” Dkt. 168. A  
22 Notice of Transfer of Appeal to District Court was filed on the docket by the Debtor on  
23 August 8, 2022. Dkt. 180. Debtor also filed a Notice Regarding Appeal From Bankruptcy  
24 Court that was entered on August 11, 2022. Dkt. 184. Ultimately, the District Court Case,  
25 no. 8:22-cv-1462-RGK was dismissed by Debtor, thereby eliminating any issue regarding  
26 this Court’s jurisdiction over the Motion. See Dkt. 215.  
27  
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Standards for Relief Under Federal Rules of Civil Procedure 59(e) and 60(b)

Federal Rules of Civil Procedure (FRCP) 59(e) and 60(b) are applicable to bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 9023 and 9024 respectively.

A motion brought under FRCP 59 involves reconsideration on the merits and generally should not be granted unless it is based on at least one of the following grounds: (1) to correct manifest errors of law or fact upon which the judgment is based; (2) to allow the moving party the opportunity to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) to reflect an intervening change in controlling law. *In re Oak Park Calabasas Condominium Ass'n*, 302 B.R. 682, 683 (Bankr.C.D.Cal.2003), *citing McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.1999), *cert. denied*, 529 U.S. 1082, 120 S.Ct. 1708, 146 L.Ed.2d 511 (2000) (cit. omitted). The term "manifest error" is "an error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." *Oak Park* at 783. A "manifest injustice" is defined as "an error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds." *Id.*

A motion brought under FRCP 59 "may seek a reconsideration of the correctness and merits of the trial court's underlying judgment." *In re Wylie*, 349 B.R. 204, 209 (9th Cir. BAP 2006). A motion based on FRCP 59 may not be used "to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir.2000). Further, such a motion may not be used to present a new legal theory for the first time, to raise legal arguments which

1 could have been raised in connection with the original motion, or “to rehash the same  
2 arguments presented the first time or simply express the opinion that the court was  
3 wrong.” *In re JSJF Corp.*, 344 B.R. 94, 103 (9th Cir. BAP 2006), *aff’d and remanded*, 277  
4 Fed.Appx. 718 (9th Cir. 2008).

5 Under FRCP 60(b), a party may seek relief from a final judgment or order on the  
6 following enumerated grounds: 1) mistake, inadvertence, surprise, or excusable neglect;  
7 (2) newly discovered evidence that, with reasonable diligence, could not have been  
8 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously  
9 called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4)  
10 the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is  
11 based on an earlier judgment that has been reversed or vacated; or applying it  
12 prospectively is no longer equitable; or (6) any other reason that justifies relief.  
13

#### 14 Factual Background

15 This matter involves a dispute over Debtor’s claimed homestead exemption in the  
16 manufactured home located at 16222 Monterey Lane, Unit 376, Huntington Beach, CA  
17 (the “Property”). The underlying facts are complex and are set forth in the pleadings filed  
18 in connection with the Homestead Motion and the instant Motion and are incorporated  
19 herein by reference. However, due to the narrow scope of this Memorandum, such facts  
20 will not be fully discussed except as relevant to the Court’s findings and conclusions.  
21

22 The pleadings filed in connection with the Homestead Motion focused primarily on  
23 whether Debtor had an ownership interest in the Property as of the petition date, i.e., July  
24 9, 2021. It is undisputed that shortly after the acquisition of the Property in November  
25 2018, its registered owner was J-Sandcastle LLC (“Sandcastle”), an entity wholly owned  
26 by Debtor. Thereafter, Ron Pierpont and J-Pad LLC were added as the Property’s legal  
27  
28

1 owners. According to Debtor, Sandcastle's interest in the Property was transferred to her  
2 on February 21, 2021; according to Houser Bros the transfer did not occur and/or did not  
3 become effective until *after* July 9, 2021. In her opposition to the Homestead Motion,  
4 Debtor argued, among other things, that she qualified for the automatic homestead  
5 exemption permitted under California law because she had continuously resided on the  
6 Property as her principal residence since 2018 to the present. Debtor's Opposition to  
7 Homestead Motion at pp.15, 20. Dkt. 105. There was no evidence presented by the  
8 Joining Parties that disputed Debtor's residency claim.

10 Oral argument at the hearing on the Homestead Motion also focused on the issue  
11 of ownership as of the filing of the bankruptcy petition. Indeed, the Court's ruling on the  
12 Homestead Motion exclusively relied on matters relating to ownership, as reflected in the  
13 following excerpts from the Homestead Order:

15 In *In re Shaefer*<sup>3</sup>, the Ninth Circuit BAP found that a Chapter 7  
16 debtor cannot claim homestead exemption in limited liability company  
17 (LLC) that he owned, which owned real property at which debtor resided;  
18 debtor did not identify any beneficial or equitable interest in the property,  
19 and LLC members such as debtor had no interest in the company's  
assets, rather, debtor's interest in LLC was a personal property interest  
outside the statutory definition of a homestead. 623 B.R. 777 (B.A.P. 9th  
Cir. 2020).

20 Here, Debtor has failed to meet her burden that the Property is  
21 subject to exemption. First, the HCD records show that J-Sandcastle LLC,  
22 not Debtor, was the Property's owner of record on the Petition Date. As of  
23 June 7, 2021— about a month before the Petition Date—the Property's  
registered owner was J-Sandcastle LLC, and the legal owners were  
Pierpont and J-Pad LLC. Hays Decl., Ex. 17 at 142. The HCD webpage  
indicates that "documents and fees" must be submitted to the HCD to

24  
25 <sup>3</sup> *In re Shaefer* was subsequently vacated by the Ninth Circuit on August 31, 2022 due to the dismissal of  
the bankruptcy case. *In re Shaefer* ("Shaefer II"), 2022 WL 3973920, at \*1 (9th Cir. Aug. 31,  
2022) (vacating decision). The BAP decision therefore has "no precedential authority whatsoever." See  
26 *O'Connor v. Donaldson*, 422 U.S. 563, 578 n. 2, 95 S.Ct. 2486, 2495 n. 2, 45 L.Ed.2d 396 (1975) . It's  
availability for citation for any purpose is, therefore, uncertain. In any event, the Court notes that 1) in  
27 *Shaefer*, the debtor asserted an interest in the LLC itself and not in the real property owned by the LLC,  
and 2) as discussed *supra* herein, an equitable interest in real property may be shown by occupancy.



1  
2 In conclusion, Debtor failed to carry her burden because, on the  
3 Petition Date, the Property's registered owner was J-Sandcastle LLC, and  
4 the legal owners were Pierpont and J-Pad, LLC. As a result, the Property  
5 was not part of the estate and not eligible for an exemption.

6 Neither the Court's ruling at the hearing or the Homestead Order includes a full or  
7 proper analysis of Debtor's claimed automatic homestead exemption under Cal. Civ Proc.  
8 Code § 704.720(a). The Court believes such oversight was in error.

9 Relief Under Either FRCP 59(e) or FRCP 60(b) is Warranted Because Debtor has  
10 Demonstrated Entitlement to an Automatic Homestead Exemption Under Cal.Civ.Proc.

11 Code §704.720(a)

12 Though the Motion does not specifically cite FRCP 59(e) or FRCP 60(b),  
13 the substance of the arguments therein is consistent with either Rule and Debtor clarifies  
14 in her Reply brief that she is seeking relief under both Rules. Debtor's Reply brief at 5.  
15 As previously noted, it is undisputed that Debtor has resided continuously on the Property  
16 as her principal residence from November 2018 to through the petition date and beyond.  
17 As a matter of law, Debtor meets the requirements for an automatic homestead  
18 exemption under Cal. Civ. Proc. Code §§ 704.710(c) and 704.720(a).

19 In *In re Gilman*, 887 F.3d 956, 964-965 (9<sup>th</sup> Cir. 2018), the Ninth Circuit held  
20 as follows:

21  
22 California provides for an "automatic" homestead  
23 exemption. Cal. Civ. Proc. Code § 704.720(a). The automatic  
24 homestead exemption protects a debtor "who resides (or who is  
25 related to one who resides) in the homestead property at the time  
26 of a forced judicial sale of the dwelling." *In re Anderson*, 824 F.2d  
27 754, 757 (9<sup>th</sup> Cir. 1987); *see also Diaz*, 547 B.R. at 334 ("The filing  
28 of a bankruptcy petition constitutes a forced sale for purposes of  
the automatic homestead exemption.").

Under Cal. Civ. Proc. Code § 704.710(c), a "homestead" is  
"the principal dwelling (1) in which the judgment debtor or the  
judgment debtor's spouse resided on the date the judgment

1 creditor's lien attached to the dwelling, and (2) in which the judgment  
2 debtor or the judgment debtor's spouse resided continuously thereafter  
3 until the date of the court determination that the dwelling is a homestead."  
4 This "requires only that the judgment debtor *reside* in the property as his  
5 or her principal dwelling at the time the judgment creditor's lien attaches  
6 and continuously thereafter until the court determines the dwelling is a  
7 homestead." *In re Elliott*, 523 B.R. 188, 196 (BAP 9th Cir.  
8 2014) (quoting *Tarlessen*, 184 Cal. App. 4th at 937, 109 Cal.Rptr.3d 319).  
9 It does not require that the debtor continuously own the property. *Id.*

10 To determine whether a debtor resides in a property for homestead  
11 purposes, courts consider the debtor's physical occupancy of the property  
12 and the intent to reside there. *Diaz*, 547 B.R. at 335; *Ellsworth v. Marshall*,  
13 196 Cal.App. 2d 471, 474, 16 Cal.Rptr. 588 (1961) ("The physical fact of  
14 the occupancy and the intention with which the premises are occupied 'are  
15 both elements to be considered in determining the actual residence.' ")  
16 (quoting *Lakas v. Archambault*, 38 Cal.App. 365, 372, 176 P. 180 (1918)).

17 California law rejects Phillips' argument that title to the property is  
18 necessary to claim a homestead exemption. For instance, *Tarlessen* held  
19 that "judgment debtors who continuously reside in their dwellings retain a  
20 sufficient equitable interest in the property to claim a homestead  
21 exemption even when they have conveyed title to another." 184 Cal.App.  
22 4th at 937, 109 Cal.Rptr.3d 319. The court further noted that "[s]uch a  
23 result is consistent with the purpose of California's homestead exemption  
24 to protect one's dwelling against creditors." *Id.* Likewise, *Elliott* held that  
25 conveyance to a third party does not defeat a debtor's right to an  
26 automatic exemption, "because continuous residency, rather than  
27 continuous ownership," controls the analysis. 523 B.R. at 196.

28 Importantly, *Gilman* cites with favor the case of *Tarlessen v. Broadway  
Foreclosure Investments, LLC*, 184 Cal.App.4th 931 (2010). In analyzing the interplay  
between Cal. Civ. Proc. Code §§ 703.720 and 704.710(c), the *Tarlessen* Court explained:

Broadway bases its argument in substantial part on the language  
of section 703.020 which provides that statutory exemptions "apply only  
to property of a natural person." Broadway reads section 703.020 to imply  
a requirement of ownership. But the authorities Broadway cites do not  
support its argument. While section 703.020, subdivision (a) states  
generally that "[t]he exemptions provided by this chapter apply only to  
property of a natural person," the statutory definition of "homestead"  
provided in section 704.710 requires only that the judgment debtor reside  
in the property as his or her principal dwelling at the time the judgment  
creditor's lien attaches and continuously thereafter until the court  
determines the dwelling is a homestead. (§ 704.710, subd. (c).) There is  
no requirement in section 704.710 that the judgment debtor continuously

1 own the property, and we do not read section 703.020 to impose  
2 such a requirement. 184 Cal.App.4<sup>th</sup> at 937.

3 Further, the Court in *Tarlessen* recognized that “debtors who continuously  
4 reside in their dwellings retain a sufficient equitable interest in the property to claim  
5 a homestead exemption even when they have conveyed title to another.” *Id.*  
6 (citations omitted). Accordingly, the Court finds and concludes that Debtor  
7 satisfied her burden of establishing entitlement to an automatic homestead  
8 exemption under California law and that the Court erred in not recognizing such  
9 entitlement in its Homestead Order.

10  
11 Debtor’s Homestead Exemption in the Amount of \$600,000 Allowed by Cal.

12 Civ. Proc. Code § 704.730(a) is Not Limited by § 522(p)(1)

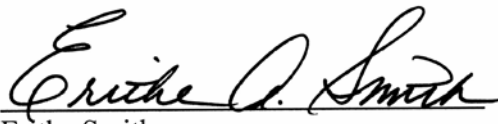
13 In its Response to the Motion, Houser Bros requests that if the Court grants  
14 the Motion to allow Debtor a homestead exemption, such exemption should be  
15 limited to \$170,350 pursuant to 11 U.S.C. § 522(p)(1) because, according to  
16 Debtor, she acquired an ownership interest in the Property on February 21, 2022  
17 (less than 180 days before the bankruptcy filing). Section 522(p)(1) limits a  
18 debtor’s ability to take advantage of homestead exemptions under state law.  
19 Specifically, § 522(p)(1) provides that a debtor “may not exempt any amount of  
20 interest *that was acquired by the debtor* during the 1215-day period preceding the  
21 date of the filing of the petition that exceeds . . . \$170,350 in value in real or  
22 personal property that the debtor . . . uses as a residence.” (emphasis added) A  
23 majority of courts have held that § 522(p)(1) applies to “opt-out” states such as  
24 California. See, *In re Virissimo*, 332 B.R. 201, 207 (Bankr. D.Nev.2005); *Kane v.*  
25 *Zions Bancorporation, N.A.*, 2022 WL 4591787 (September 29, 2022). This Court  
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1 §§ 704.720(a) and 704.730(a), 2) the Motion should be granted under FRCP 59(e) on the  
2 basis of manifest error of law and under FRCP 60(b)(6); 3) the Court's Homestead Order  
3 entered on August 5, 2022 should be vacated and the underlying Homestead Motion  
4 related thereto should be deemed denied; and 4) Debtor is entitled to a homestead  
5 exemption in the amount of \$600,000.  
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23 Date: December 19, 2022  
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Erithe Smith  
United States Bankruptcy Judge